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Dear Ben

### **OFCOM ADVICE ON MEASURING PLURALITY ACROSS MEDIA**

I am writing to you on behalf of RadioCentre, the industry body for commercial radio, in response to Ofcom's invitation to comment on its document regarding measuring plurality across media, which it issued on 21<sup>st</sup> October 2011 following a request by the Secretary of State to consider this area.

I should start by stating that there is broad support in commercial radio for the concept of ensuring sufficient plurality in the media, to ensure that ownership is not unduly concentrated in a manner that would be against the public interest.

The current legal framework was clearly developed with this in mind, with successive Ministers emphasising the need to ensure that no single person controls too much of the media, and therefore does not have excessive power to influence opinions and set the political agenda.

The evidence suggests that this framework has operated effectively since its introduction through the Enterprise Act 2002 and associated changes in the Communications Act 2003. However, there are a number of principles that we would urge Ofcom to bear in mind when measuring plurality in future. Some of these are of general application and some have a particular resonance for the radio industry.

- **Transparency and flexibility**

We understand the Government's desire to examine the extent to which plurality across media can be measured consistently and objectively. This approach is eminently sensible and has the potential to provide greater clarity and certainty for all concerned - whether media businesses, citizens or consumers, or the Secretary of State when being required to consider intervention in mergers that could give rise to public interest concerns.

However, the relevant or special merger situations involving media enterprises, including cross-media mergers, are complex undertakings that are a result of unique circumstances in each case. Therefore we would urge Ofcom to advise Government against the imposition of a rigid set of rules or thresholds that could be seen as binding. To do so might limit the flexibility available to the Secretary of State's and his ability to examine each case on its merits, which is an important aspect of the current system.

Improving the means of measuring plurality is important, and must be instrumental in any decision to intervene (or not) in a media merger, but it should not be used as a means of replacing the existing framework and the powers that parliament has vested in the Secretary of State through section 58 of the Enterprise Act 2002.

- **Nature and impact of news output**

Ofcom rightly considers a number of measures when advising on the ability of media businesses to influence opinions and set the political agenda. Understandably this starts with a number of conventional measures of media impact, including reach; share of minutes/ hours; share of references; and whether the medium constitutes a 'main source' of news.

However, we believe that there are further nuances in some sectors (such as radio) that must be taken into account. For example, while Sky News (through its contract with IRN) supplies news content to commercial radio stations, this is a news supply agreement and it is the stations themselves that retain editorial control and produce the vast majority of bulletins, particularly in peak time. Therefore it would be misleading to imply that commercial radio simply receives and broadcasts 'wholesale' news content from Sky (as Ofcom appeared to do previously<sup>1</sup>). Moreover, commercial radio bulletins consist mainly of short informative news headlines, providing listeners with the news they need to know rather than comment, analysis or opinion pieces.

Therefore it would be misleading to equate the reach of commercial stations that carry this news (over 33m listeners) with the reach of news on BBC radio stations (over 34m listeners). This does not take into account the extent of radio news listening on these networks, or the distinct nature of much commercial radio and BBC output.

Although commercial radio is still committed to providing news and information, the vast majority of its output is music and entertainment. Whereas the BBC's radio portfolio includes a national station that is obliged to broadcast 75% news (5 Live); a national station that broadcasts the country's most influential radio news programmes at peak times (Radio 4); and a local radio network that is predominantly speech and news based.

The different focus of these services is one of the reasons that media (and media businesses) have a differing ability to influence opinions. This is something that can be measured and assessed by the extent to which a medium is a main (or only) source of news and its relative importance to other sources, but also by considering the proportion of output that could be considered as news.

Ofcom indicated that it understands and appreciates this distinction when it considered the acquisition of Sky by News Corp in 2010. Specifically it stated that *'it is likely that estimating reach on the basis of all radio listening overstates the level of reach achieved in respect of national news listening'*, but that *'no industry data is available to estimate the share or reach of radio news'*<sup>2</sup>.

- **Impact of the BBC**

Mergers in the radio sector should also be considered to be different due to the uniquely large public intervention in the sector in the form of BBC. The BBC's current share of radio listening sits at 55.4%. This is significantly higher than its share of any other media, including television where its overall share is around 30% (and declining).

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<sup>1</sup> Ofcom 'Report on public interest test on the proposed acquisition of British Sky Broadcasting by News Corporation', December 2010, p.36-7

<sup>2</sup> Ofcom 'Report on public interest test on the proposed acquisition of British Sky Broadcasting by News Corporation', December 2010, p.37

This is a further reason why the provision of commercial radio news from a single source does not (and should not) raise issues of plurality. It also makes it difficult to envisage a situation where commercial radio ownership or consolidation would raise serious plurality concerns.

A more pertinent question, which is raised by the Secretary of State's letter on media plurality in October 2011, is whether and how the framework should apply to the BBC. While it is not appropriate for RadioCentre to seek to provide Ofcom with the solution to this issue, we would say that we agree that this matter merits further investigation.

As well as its dominance in radio, the BBC also has a significant advantage due to its unique ability to cross-promote its content nationally and locally across television, radio and online, irrespective of its public value. This promotion (across a network of services that are rightly prevented from carrying advertising) provides a reach and impact for its promotional activity, which is far in excess of what any commercial broadcaster could realistically achieve.

Although the BBC's growth across media is likely to be constrained in the coming years (following its fixed licence fee and plans to reduce projected budgets by 20% under the Delivering Quality First initiative), its position will remain relatively strong and stable, when compared to many of the more fragile commercial operators. Indeed it is still possible that the BBC could grow organically in influence and share in some sectors, whether due to its own actions or market evolution.

As such it could be perverse to limit the growth and development of viable commercial operations, particularly if these only represent a fraction of the BBC's market size, while ignoring the BBC entirely.

- **Broadcasting regulation/ internal plurality**

Ofcom's Broadcasting Code requires that '*news in whatever form, must be reported with due accuracy and presented with due impartiality*'. Consequently it should be noted that the current framework includes a safeguard against potential influence on the news agenda by media owners. As such it would be sensible for Ofcom (and the Secretary of State) to take this into account when considering mergers involving broadcasters.

We understand why Ofcom has previously stated that this '*does not on its own ensure a sufficiency of plurality of news*<sup>3</sup> – the position also adopted by the Competition Commission in the Sky/ ITV case. However, it should be recognised as a relevant factor in reducing the likelihood of a person influencing opinions and the political agenda.

- **Use of multiple media platforms**

A further factor that should also be considered in assessing media plurality in future is the greatly expanded range of news sources that are now available to consumers. These sources have increased significantly since the Enterprise Act 2002 and Communications Act 2003 were debated. Consumers now access content from an average of 2.9 different news providers in a typical week<sup>4</sup>, with some estimates suggesting regular use of around 4 different sources.

Ofcom has taken the position previously that the dramatic changes in multi-sourcing of media are important but '*we do not believe we can rely on it to ensure sufficient plurality*<sup>5</sup>. However, we believe that this must be a factor that is monitored closely and attributed greater

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<sup>3</sup> Ofcom 'Report on public interest test on the proposed acquisition of British Sky Broadcasting by News Corporation', December 2010, p.12

<sup>4</sup> Ofcom cross media audience research (2010)

<sup>5</sup> Ofcom 'Report on public interest test on the proposed acquisition of British Sky Broadcasting by News Corporation', December 2010, p.13

significance when measuring media plurality, particularly as the consumption of multiple and interchangeable online news sources continues to grow.

I hope that these comments are helpful. If you require any further information or would like to discuss any elements of this response please contact my office or Matt Payton at [matt@radiocentre.org](mailto:matt@radiocentre.org).

Yours sincerely

A handwritten signature in black ink, appearing to read "Harrison".

Andrew Harrison  
**Chief Executive, RadioCentre**